

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.07.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Akzo Nobel Industrial Chemicals BV
Vs
Oren Hydrocarbons Pvt Ltd

MAIN PETITION NUMBER : IBA/938/2019
(IA/MA) APPLICATION NUMBERS

IA/620(CHE)/2024

ORDER

Present: Mr. Srinivasan, Ld. Counsel for Applicant.

Vide separate order pronounced in open Court, the application is disposed of
with directions.

-sd-

[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

MS

-sd-

[SANJIV JAIN]
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/620/CHE/2024 in IA(IBC)/57/CHE/2023 in IBA/938/2019

*(filed under Section 60(5)(b) of the Insolvency & Bankruptcy Code, 2016 read with
Rule 11 of the NCLT Rules, 2016)*

In the matter of Oren Hydrocarbons Private Limited

Idealis Chemicals Private Limited

No.2., North Crescent Road, T. Nagar,
Chennai-600 017.

... Applicant

-Vs-

Mr. Radhakrishnan Dharmarajan

Liquidator of Oren Hydrocarbons Private Limited

Flat No.31, 3rd Floor, Krishna 59, 1st Avenue, 100 feet road,
Ashok Nagar, Chennai, Tamil Nadu- 600 083.

... Respondent / Liquidator

Order pronounced on 9th July 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Srinivasan, Advocate

For Respondent : T. Ravichandran, Advocate

ORDER

(Heard through hybrid mode)

IA(IBC)/620(CHE)/2024 is an application filed by the Successful

Purchaser viz. Idealis Chemicals Private Limited, which is a company

engaged in the business of mining, refining, processing, manufacturing etc seeking reliefs as follows;

- "a. Pass an order granting the reliefs, concessions, exemptions and directions as more fully described in Annexure A to this Application;*
- b. Pass an order granting liberty to the Applicant and the CD to approach this Hon'ble Tribunal for suitable directions for implementing and availing the reliefs, concessions, exemptions and directions, as fully described in Annexure A to this Application and*
- c. Pass such other orders or directions as this Hon'ble Tribunal may deem it fit and proper in the circumstances of the case, and thus render justice."*

2. This Tribunal vide an order dated 10.05.2023 passed in IA(IBC)/57(CHE)/2023 had ordered for Liquidation of the Corporate Debtor and the Respondent herein was appointed as the liquidator of the Corporate Debtor.

3. It is stated that during the liquidation process, the Applicant herein participated in the e-auction process of the Corporate Debtor and as such participated in the e-auction held on 20.12.2023 and submitted its bid at the reserve price of Rs.76.55 Crores. The Applicant was the sole bidder and emerged as the successful auction purchaser. The

Respondent confirmed the same and thereafter, issued a letter of intent dated 21.12.2023 ("LOI") to the Applicant setting out terms of sale. The Applicant agreed to the letter of intent and executed the same on 21.12.2023.

4. It is stated that consequent to the LOI, the bank guarantee provided for the EMD amount was returned and the EMD amount was paid separately on 19.01.2024. The balance sale consideration being Rs.68,90,00,000/- (Rupees Sixty-Eight Crores Ninety Lakhs Only) along with interest @ 12% p.a. being Rs. 35,74,066/- (Rupees Thirty Five Lakhs Seventy Four Thousand and Sixty-Six Only) for delay in payment by 16 days was paid on 5.2.2024. Thus, the Applicant has made the payment of entire sale consideration.

5. It is stated that the Applicant acquired the Corporate Debtor based on the limited documents/clarifications provided by the Respondent and employees of the Corporate Debtor, and disclosures made during the CIRP/liquidation process such as information memorandum, etc., Further, as indicated in the auction notice, the sale

was made on 'as is, where is and whatever is' and 'without recourse' basis. Therefore, the Applicant will not have recourse against any person including the Respondent for any claims (civil or criminal), liabilities, litigations, non-compliances, etc., in relation to the Corporate Debtor or its past affairs. Even though the Applicant has purchased the Corporate Debtor, it is imperative that the Applicant is protected from any liabilities or claims (civil, criminal or otherwise) that may relate to a period prior to the Applicant taking over the management and control of the Corporate Debtor. The Applicant as well as the Corporate Debtor must be provided with adequate protection and immunity from claims, prosecutions, liabilities, etc., for any act or omission that relate the prior period like a sale during the CIRP under a resolution plan. Further, the Corporate Debtor has operations in more than 6 locations with various factories and offices in various states, which will require complying various laws and obtaining various approvals/permissions (either fresh or renewal), which the promoters/the Respondent may not have done. The Applicant requires considerable time to set right the non-compliances and to obtain requisite approvals/permissions (as applicable). It is also a settled position of law that immunity from past

liabilities as applicable for an acquisition in the CIRP, also applies to the purchase of the Corporate Debtor in the liquidation process.

6. In view of the above, it is stated that the Applicant being the successful bidder, is filing the present application seeking various reliefs, concessions, exemptions and related directions ("Concessions") from this Tribunal in relation to the above and the acquisition of the Corporate Debtor as a going concern in the liquidation process. The detailed Concessions as sought by the Applicant are enclosed as Annexure A to this Application. The Applicant submits that the concessions sought are very crucial and paramount for revival and operation of the Corporate Debtor and the Applicant; and to ensure smooth transition of control/ownership of the Corporate Debtor. The Applicant further submits that without the concessions being granted, it may not be possible to completely take over the Corporate Debtor in terms of the acquisition plan proposed herein; and to revive / operate the Corporate Debtor.

7. Heard the submissions made by the Learned counsel for the Applicant and Learned Liquidator. It is seen that the Liquidator has

already sold the Corporate Debtor as a going concern to the Applicant herein.

8. The Hon'ble NCLAT in the matter of **M/s Shiv Shakti Inter Globe Exports Pvt. Ltd. Vs. KTC Foods Pvt. Ltd. Through Liquidator, Mr. Anup Kumar Singh & Anr.** in *Company Appeal (AT) (Insolvency) No. 650 of 2020* has extended the 'clean slate' principle to going concern sale under liquidation. It has held in para 21 as under;

21. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. **The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd.'**

Vs. 'Edelweiss Asset Reconstruction Company Ltd. & Ors.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd.' Vs. 'Satish Gupta & Ors.' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.

(emphasis supplied)

9. Thus, by taking into consideration of the attendant facts and circumstances of the present case, the Application filed for Sale as a Going Concern by the Applicant is allowed.

10. The Learned Counsel for the Applicant, even though has claimed a total of 120 Reliefs and Concessions in the Application, but has restricted itself to only 20 Reliefs and Concessions filed vide memo dated 22.06.2024 in Diary No. 3096 of 2024. Accordingly, we order as follows;

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
1.	Direct that the entire equity shares / share capital including the rights and liabilities of the existing shareholders to be extinguished on Handover Date and the Corporate Debtor to issue and allot equity shares worth Rs.5,00,00,000/- being 50,00,000 equity shares of Rs.10/- each to the Applicant and its nominees, without any further act or compliance.	Granted
2.	Post issuance of aforesaid capital, the Applicant be permitted to structure the balance sale consideration of Rs.71,90,74,066/- along with interest amount as debt	Granted

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	of such kind on such terms as the Applicant deems fit, without any further act or compliance.	
3.	The existing directors and KMPs shall stand removed; and the board of directors be replaced / reconstituted with Mr. Ranjit Pendurthi with DIN 01952929; and Mr. S. Meenakshisundaram with DIN 01176085 without any further act or compliance; and the ROC shall be directed to change the status of the Corporate Debtor to Active.	Granted
4.	<p>Direct the Liquidator to do the following:</p> <p>(a) Write back all the claims / liabilities of the Corporate Debtor (from any creditor, financial or otherwise) including tax dues and other statutory dues as not payable and reflect the total liabilities at the amount of the consideration (as reduced by the amount of liquidation costs) by credit to capital reserve.</p> <p>(b) Record the carrying value of all the Assets at their realizable value and any difference arising between book value and realizable value to be debited / credited (As the case may be) to Capital Reserve.</p> <p>(c) Complete all compliance in respect of the Corporate Debtor for the period up the Handover date including filing of necessary documents, financial statements and Returns with authorities.</p> <p>(d) Cooperate with the Applicant and provide necessary support including but not limited to handing over of original copies of the title deeds and assistance in takeover.</p>	To be done by the SRA post implementation
5.	(a) Direct that all the rights and claims including Litigations, proceedings, investigations (criminal or civil) or Encumbrances (whether lodged, unknown, crystallised, disclosed, penal/interest, undisclosed or	Granted in terms of

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	<p>otherwise) of or initiated by any class of creditor (shareholder, financial, operational, promoters, directors, statutory, employee, contingent, guarantee, workmen, any other securities holder, etc.), authorities or any person/stakeholder against the Corporate Debtor and all related debts/liabilities/Encumbrances including all kinds of security interest or encumbrances on the Corporate Debtor's assets (whether contractual or statutory) in favour of or issued by any person or authority, relating to a period till the Handover Date, shall stand settled, written-off, extinguished, discharged/ released without any further act or compliance of the Corporate Debtor/ Applicant; and the Corporate Debtor/ the Applicant is not required to make any further payments including towards penalties, additional amounts for non-compliances; and all contracts between the Corporate Debtor and the said creditors/claimants,</p> <p>b) All default notifications issued till the Handover Date shall stand cancelled.</p> <p>c) All the proceedings initiated by the Corporate Debtor against any person shall continue</p>	<p>Section 32A of IBC, 2016</p> <p>Granted</p> <p>Granted</p>
6.	<p>The CD/ the Applicant shall not be liable for any Claim including penalties, Litigation (civil or criminal), proceeding, re-assessment, re-opening, revision or other proceedings pertaining to a period prior to the Handover Date, under any Applicable Laws including but not limited to, under income tax laws, indirect tax laws, foreign exchange laws, prevention of money laundering and GST laws. On and from the Handover Date, the CD or the Applicant or any of its representatives shall not be liable for any offence/violation or non-compliance committed under</p>	<p>Granted in terms of Section 32A of IBC, 2016 and the appropriate authorities shall consider keeping in view the</p>

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	any Applicable Law and shall not be prosecuted or proceeded against for any such offence for a period up to the Handover Date.	provisions of IBC, 2016
7.	The financial creditors shall upgrade the debt account of CD to "Standard"; and all default notifications issued to related agencies/authorities viz, RBI, CIBIL, credit rating agencies, any information utility shall stand revoked. The Secured Creditors shall release all the security interest / Encumbrances over the Assets of the CD (through registered or unregistered instruments) with all authorities; handover documents relating to the Assets to the CD; and the concerned authorities be directed to update the records regarding the same;	Granted
8.	Direct that all approvals, licenses, permissions, certifications service connections including electricity connection ("Approvals") shall remain vested with the CD free from all claims; In case of expired approvals and permissions, the CD shall comply with the applicable laws for obtaining or maintaining the Approvals, no coercive action including termination or refusal to grant, shall be taken by any authorities, for non-compliances prior to the Handover Date	The appropriate authorities shall consider keeping in view the provisions of IBC, 2016
9.	Direct that all the Assets of the CD, including advances, security deposits with authorities or any person (whether disclosed in information/asset memorandum or books or not) including debts / claims accrued or payable, shall be vested with the CD, free of all Claims, Encumbrances and Litigations with unconditional, clear and marketable title over the said Assets and the Applicant shall get all the rights and title in the whole of the CD, including its Assets free of all Claims, Encumbrances and Litigations. All the title deeds and documents relating to the CD or its assets held by the Liquidator or any other stakeholders, if any, shall be returned / handed over to the CD. A fresh period of limitation shall accrue without any claim for	Granted

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	set-off or counter claim. All authorities shall be directed to update/mutate their records to reflect the CD as the owner of the Assets; and to reflect the correct description of the assets	
10.	Direct that the CD, its Assets, and the Applicant shall not be liable for any non-compliance of the development control laws by the previous management or erstwhile owners in developing the land or constructing any superstructure or in relation to occupation/use of the immovable properties. The concerned Governmental Authority shall on making an application under the Applicable Laws with payment of required fee (any interest / penalty arising prior to Acquisition Date shall be waived) shall provide the necessary Approvals within the period as prescribed under the respective Applicable Laws	Granted in terms of Section 32A of IBC, 2016
11	Direct all the shares, securities and investments of all kinds held by the CD in its subsidiaries, associate companies and other companies/any Person, shall be deemed to have been transferred and vested with Mr. Rizwan Ahmad, the erstwhile promoter of the CD; the CD shall not have any interest over the same; the CD or the Applicant shall not be liable in any manner and whatsoever (civil or criminal) in relation to the said assets or affairs of the said Persons; and all reliefs and concessions sought herein shall also mutatis mutandis apply to the said Persons	Granted. However, relief in respect of erstwhile promoter not Granted.
12	A direction to be issued to RBI, DGFT or such other authorities for exemption to be given to the CD with respect to adhering to compliance/regulatory procedures for write-off of non-realizable trade receivables or investments in foreign currency. A Direction to be issued to banks of the CD to facilitate closure of export and import data processing and monitoring system with respect to export non-realizations, if any	Corporate Debtor to approach appropriate authorities to consider

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
13	The CD and the Applicant shall not be liable for any Taxes (direct, indirect or any statutory levies) that arise from or in relation to the acquisition of the CD including from claims/liabilities arising on capital reduction in CD, write off/ write down of the amounts due to creditors/stakeholders, value of Assets, value of inventories, etc. without any impact on brought forward tax credits, brought forward income tax and book loss / depreciation; and waive all liabilities (including interest and penalty) arising in respect of periods up to the Handover Date	This is for the appropriate authorities to consider
14	Direct that all the notices, assessments, Litigations and proceedings (pending, completed, to be initiated, etc.), disallowance of deduction/ exemption, etc. on any ground, and related Claims/demands, with respect to Income Tax, Central Sales Tax, GST, VAT, CENVAT, MODVAT, Customs and any other applicable taxes under any applicable laws, shall be deemed to have been completed, closed, withdrawn, settled and extinguished; no liability shall accrue to the Applicant and/or the CD including towards the Taxes, interest, penalty, any prosecution, adjustment of taxable income or brought forward losses, etc. pertaining to any period prior to the Handover Date on account of any reason including non-compliances, non-deduction of taxes, non- payment of withheld taxes, non-disclosures, wrong claims, mis/under reporting of income, disallowing of benefits, brought forward of losses, non-payment of taxes, wrong claim for deductions, exemptions, losses claimed, etc	Granted in terms of Section 32A of IBC, 2016
15	Direct that any prior benefits including claims for exemptions, deductions, tax losses, refunds, etc., which have not been availed or received by the Corporate Debtor shall be available to the Corporate Debtor, whether based on the balance in the financial statements or otherwise; the tax authorities shall	Not Granted

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	accept filing of the returns / applications to claim the same	
16	<p>Direction be issued that:</p> <p>(a) The Applicant is exempted from obtaining any consent, no-objection, waiver or consent under the tax laws including under section 281 of the IT Act, 1961 for acquiring the CD or its assets; and waivers from any Tax authorities including in terms of Section 79 and Section 115JB and any other provision of the Income Tax Act, 1961, shall be deemed to have been granted.</p> <p>(b) Any liability arising under section 28(iv), section 41(1), section 56 and section 170 of the Income-tax Act, 1961 due to capital reduction in the CD, write off/write down/write back of various liabilities/Claims without any impact on carried forward loss.</p> <p>(c) the CD shall be represented in all proceedings initiated by tax authorities or before any forum relating to any assessment/financial years, up to the Handover Date, without any additional burden and the same shall not be treated as time barred</p>	<p>The appropriate authorities shall consider keeping in view the provisions of IBC, 2016.</p>
17	<p>A direction be issued to the effect of waiving any withholding Tax, income-Tax and MAT liability or consequences on CD, the Applicant and its shareholders on account of the acquisition, including but not limited to liabilities if any under Section 28, Section 41, Section 50 CA, Section 56, Section 43, Section 28, Section 115JB, Section 79, Section 45, Section 269SS, Section 269T and Section 271E of the Income-tax Act, 1961, including, without limitation, waiver of MAT and income tax implication arising due to hiving-off of surplus/ obsolete Assets; writeback/write off of liabilities in the books of accounts of CD without any impact on brought forward tax and book loss depreciation, pursuant to</p>	<p>The appropriate authorities shall consider keeping in view the provisions of IBC, 2016</p>

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	the acquisition; or the revaluation of Assets of the CD to their realizable value, pursuant to the Acquisition	
18.	<p>The tax and other authorities be deemed to have approved the following:</p> <p>(a) Carry forward losses and depreciation as per Section 79 of Income Tax Act, 1961</p> <p>(b) To waive all demands/ interest and penalty charged against the dues of the Tax or other provisions with the fresh timeline; authority for the period prior to the Handover Date.</p> <p>(c) To allow total loss brought forward (including unabsorbed depreciation) to be reduced from book profit for levy of MAT under Sec 115JB of the IT Act, 1961:</p> <p>(d) Exemption from Section 41 of the IT Act, 1961 with respect to any income which may arise due to write back of liabilities against the existing brought forward losses and unabsorbed depreciation pursuant to the acquisition.</p> <p>(e) Exemption under Section 79 of the IT Act, 1961 shall be deemed to have been (granted upon approval of the reliefs and concessions as if the CD was acquired through a resolution plan approved under the IBC after affording an opportunity to the jurisdictional Principal Commissioner or Commissioner;</p>	<p style="text-align: center;">The appropriate authorities shall consider keeping in view the provisions of IBC, 2016</p>
19.	<p>Direction be issued that:</p> <p>(a) The sale of CD as going concern is akin to implementation of our acquisition plan under the corporate insolvency resolution process; and consequently, all attendant benefits, privileges and exemptions under all Applicable Laws including under tax laws shall apply mutatis mutandis.</p>	<p style="text-align: center;">Granted in terms of Section 32A of IBC, 2016</p>

S. No	RELIEF/CONCESSION AS SOUGHT	ORDERS THEREON
	<p>(b) All the power of attorneys, board resolutions or authorising documents provided or issued by the CD to any Person shall stand revoked/ineffective/null and void.</p> <p>(c) No authorities or public sector undertakings including APMDC shall insist on the CD meeting any financial / past performance criteria to participate in any auction, tender, etc., for 3 years from the Handover Date; and the CD shall be waived from such requirements.</p> <p>(d) Exemption of the CD from complying with IND AS 101 for disclosure of comparative information for the past periods;</p>	<p>Granted in terms of Section 32A of IBC, 2016</p> <p>Not Granted</p> <p>Granted in terms of Section 32A of IBC, 2016</p>
20.	Direct that the CD/the Applicant shall be at liberty to approach this Hon'ble Tribunal to seek appropriate reliefs to address any difficulties faced with the implementation of these terms	Granted

14. With the above said directions, this Application stands **disposed of.**

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond